IN THE HIGH COURT OF BOMBAY AT GOA

Writ Petition No.81/2007.

1. Mrs. Justina Preciosa Lobo,
Widow of late Eduardo Jose Francisco
Caridade Pedro Nolasco Mendosa
alias CaridadeMendonca;
major, house wife.

2. Mr. Joao Agnelo do Mendonca,
Son of late CaridadeMandonca;
major, married, service,
through his duly constituted power
of attorney Mrs. JustinaPreciosa Lobo

3. Mrs. Loretta Alda Mendonca,
wife of the appellant no.2 above,
major, married, housewife.

4. Mr. John Cyril Mendonca,
Son of the late Caridade Mendona;
major,married, service,
through his duly constituted power
of attorneyMrs. Justina Preciosa Lobo

5. Mrs. Vilma Rose Mendonca,
Wife of the appellant No.4 above;
major, married housewife,
through her duly constituted power
of attorney Mrs.Justina Precioso Lobo

6. Miss Willma Mendonca, alias,
Jurecy Willma Mendonca,
Daughter of late Caridade Mendonca,
major, spinster,
All residents of Santarxette,Aldona,
Bardez, Goa. Petitioners/Original defendants.

Versus

1. Mr. Tome alias Thomas Nolasco,
Isidoro do Mendonca, son of

late Mr. Joao Paulo de Mendonca and
late Mrs.Beatriz Isabel Angelina
Pinto alias Beatriz Pinto;(since deceased)
through his legal representatives.

1(a) Mrs. Elizabeth Fernandes, widow,
housewife,

1(b) Master Anderson Fernandes;
minor, represented by his mother and
natural guardian viz. the respondent
no.1(a) above, both residents of Zoidar
Vaddo, Nachionola, Bardez, Goa.

1(c) Mrs. Carmine Pereira,
major,married, housewife,

1(d) Mr. Reginaldo Pereira,
major, married, husband of respondents
no.1(c) above,
both residing at Naigaon, District Thane,
Maharashtra.

1(e) Mr. Francis Mendonca,
major, unmarried, service,

1(f) Mr. Ignatius Mendonca,
major, unmarried, service,
both residents of Zoidar Vaddo,
Nachionola, Bardez, Goa.

2. Mrs.AramitaCarlota Do Souza
alias Aramita Carlota de Mendonca,
widow of late Tom alias Thomas
Nolasco, major, housewife, resident
of Zoidar Vaddo, Nachionda, Bardez,
Goa.

3. Mrs.Maria Filomena Rita de Mendonca,
alias Maria Filomena Rita Fernandes,
daughter of late Joao Paulo de Mendonca
and Mrs.Beatriz Isabel Angelina Pinto
alias Beatriz Pinto, major married,
housewife.

4. Mr. Pedro alias Peter Paulo Francisco Lazaro Fernandes, husband of respondent no.2 above. Both residents of Carona, Aldona,Bardez, Goa. .. Respondents/ Original plaintiffs.

Mr. S.D.Lotlikar, Sr. Advocate for the petitioners.
Mr. N.N. Sardesai, Advocate for therespondents.

Coram :- F. I. REBELLO

Date : - 19th November,2007.

ORAL JUDGMENT **:**

Rule. Heard forthwith. The present petition is against the order dated 6.1.2007 wherein the learned trial Court has rejected the application by the petitioner herein for considering the improvements done to the residential house situated in property identified under survey No.362/54 of Aldona village. Preliminary decree has already been drawn up.

In so far as the preliminary decree is concerned, shares of the parties are to be ascertained and determined, based upon their respective shares, which has been done. At that stage, it is not possible to consider the contention of the parties, like what has been contended now, that the petitioner had made improvements to the house with consent of the respondents. The Commissioner appointed, has opined that considering the property, it is not possible to partition the house and consequently it will have to be sold by way of auction.

The case of the petitioner is that the improvements done by the petitioner should be taken into consideration as those

improvements would have a bearing on the valuation of the property including the house. The learned Counsel is right as otherwise the petitioner will have no opportunity of establishing their case as to improvements if the house is sold in auction before the issue is dealt.

Considering the above, impugned order dated 6.1.2007 is set aside and the trial Court is directed to consider the application by the petitioner to the limited extent of improvements which were done to the ancestral house standing in the property identified under S.N.362/54.

On behalf of the petitioner the learned Counsel draws attention to a typographical error in the matter of share in the decree dated dated 4.5.2002. It is contended that while passing the order in favour of plaintiff Nos.3 & 4, share marked is ½ share instead of $^{1}/12^{th}$ share. On behalf of respondent the learned Advocate states that this is typographical mistake and he has no objection to the correction. Parties to move the learned trial judge for correction of the typographical error. The learned trial judge accordingly to carry out the said correction.

Rule is made absolute accordingly with no order as to costs. Writ petition is disposed off.

F. I. REBELLO.

SMA